IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 331/2001
(Old No. 1040/1986)

Rajendra Prasad and another

Versus

State

Decided on 12-7-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

Dated: 12-7-2005

(B.S. Verma, J.)

In the High Court of Uttaranchal at Nainital.

Criminal Appeal No. 331/2001
(Old No. 1040/1986)

1- Rajendra Prasad S/o Ravi Datt,

Ilam Singh S/o Bhajan Singh,

Both residents of Village Mahargaon,

Patwari Chauki Mahargaon, Tehsil

Purola, District Uttarkashi … Appellants.

Vs.

State … Respondent.

Sri Lokendra Dobhal, learned counsel for the appellants.

Sri G.S. Sandhu, learned A.G.A.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 12th July, 2005.

This criminal appeal was filed against the judgment dated 19-4-1986, passed by the then Sessions Judge, Uttarkashi in Sessions Trial No. 10 of 1985.

2- Briefly stated the prosecution story as disclosed by the F.I.R. and the prosecution evidence is as under:

3- On 7-9-1985 it was the festival of Janmastami. Inderjeet Singh deceased had gone to Purola for delivering milk. After sunset he returned to his village Mehargaon and reached the house of his mother-in-law Smt. Balam Dei (P.W.2). he asked his mother-in-law to serve him dinner. He was served with the food by his mother-in-law. While he was dining, the three accused person Rajendra Prasad, Ilam Singh and Atol Singh reached there. They had some quarrel with Inderjeet Singh and gave him beating. Inderjeet Singh was also dragged out of the room but was rescued by one Sakal Singh who happened to reach therein time. Inderjeet Singh sustained injuries and stated bleeding from his nose and mouth.

4- From the house of the mother-in-law Inderjeet Singh went to his house and requested his wife Smt. Surtama (P.W.1) to take him to some doctor for medical treatment. Smt. Surtama was suffering from fever and therefore she refused to take her husband to the doctor and urged her husband to stay in the house during that night

so that he may be taken to the doctor in the morning. Inderjeet Singh however was eager to go to a doctor and therefore left the house and went all alone from there. At about 9.15 P.M. Inderjeet Singh visited the house of witness Narayan Dutt (P.W.3) and after telling him that he had been assaulted by the three accused demanded a sum of Rs. 200/- for getting him medically treated by a doctor. Narayan Dutt refused to part with the money and although at that time no injury was seen on the person of Inderjeet Singh, there was however bleeding from the nose. When the money was not paid, Inderjeet Singh returned back from the house of Narayan Dutt.

4- Since it was Janmastami day there was dancing and singing programme going on in the Devta Chowk of said village Mehargaon. The three accused were also there and while sitting in the chowk of one Bharat Singh in the vicinity of the Devta Ka Chowk were heard saying that they had assaulted Inderjeet Singh to such extent that he might remember is mother's milk and that they should not remove his dead body. The conversation was over heard by Km. Soban Dei (P.W.4), the daughter of Inderjeet Singh, who then was also engaged in singing and dancing programme. Hearing the conversation she at once went to her house with her brother and informed her mother about it. Soon after the cries of Inderjeet Singh were heard by his wife and daughter. The wife Smt. Surtama Dei then woke up Sobendra Singh , the nephew of Inderjeet Singh, and asked him to accompany her from the house. At about 10 P.M. Smt. Surtama Dei accompanied with Sobendra Singh then having torch with him left the house and went towards the place from where the cries or shouts were heard. In the light of the torch they saw that accused Ilam Singh was sitting on the branch of a walnut (Akhrot) tree while accused Rajendra Prasad and Atol Singh were holding Inderjeet Singh and all the three accused were tying Inderjeet Singh on the tree by a rope and then Inderjeet Singh was seen hanging by the rope from the tree. On the torch being flashed towards the side all the three accused ran away from there and none of them could be apprehended despite chase by Sobendra Singh. Later on other villagers including

Narayan Dutt (P.W.3) reached at the spot with Sobendra Singh and they also found Inderjeet Singh hanging with a rope by the tree. Inderjeet Singh was then brought down but he was found dead. Next day on 8-9-1985 informant Jaipal Singh (P.W.6) went to village Mehargaon to bring back his wife, who was the sister of the father of Inderjeet Singh deceased. He found his wife and Smt. Surtama Dei, the wife of Inderjeet Singh weeping and the dead body of Inderjeet Singh was also lying there. On query he was told by Smt. Surtama Dei that her husband had been murdered and asked him to go to Purola to lodge the report. He prepared the written report, Ext. Ka.3 and gave it to Sub Divisional Magistrate, Purola, S.D.M. Purola made an endorsement on it directing Patwari Devdung Circle to go to the spot and to do the needful. Bharat Singh Mehar Patwari Devdung Circle (P.W.7) reached the spot and held inquest on the dead body of Inderjeet Singh and prepared the inquest report, Ext. Ka.1. He attached Bushshirt, Paijama, shoes and a ring from the dead body vide memo, Ext. Ka.4 and seized rope from the dead body vide memo, Ext. Ka.5. Samples of the blood stained and plain earth were taken vide memo, Ext.Ka.6. The dead body of Inderjeet Singh was sent for post mortem, which was performed by Dr. S.S. Aswal (P.W.5) on 10-9-1985 and post mortem report, Ext.Ka.2 was prepared. On 12-9-1985 the said Investigating Officer interrogated the witnesses and thereafter arrested the three accused on 13-9-1985, and on completion of other formalities, he submitted charge sheet, Ext. Ka.12 against the three accused on 29-10-1985.

4- All the three accused were on being committed to Court of Sessions faced trial in the court of Sessions Judge, Uttarkashi. At the trial, prosecution examined above mentioned seven witnesses. No evidence was adduced in defence. The accused did not admit the accusations of the prosecution and claimed that they have been falsely implicated. On the basis of his appreciation of the evidence on record, the learned Sessions Judge by placing reliance on the evidence on P.W.1, P.W.2 and P.W.3 to the extent that Inderjeet Singh had been assaulted a little before the murder and when he was intending to go for medical examination he was done to death

by throttling and then by hanging him by accused Rajendra Prasad and Ilam Singh. Both of them therefore were held guilty. The third accused Atol Singh was given benefit of doubt on the basis of evidence of P .W. 3 that he reached at the place where the dead body of Inderjeet Singh was hanging by a tree and has put some water in the mouth of the deceased. The two accused were on being held guilty, convicted and sentenced to undergo imprisonment for life under Section 302/34 I.P.C. and two years R.I. each under Section 201 I.P.C., per judgment dated 29-4-1986, which is under challenged in this appeal.

5- Learned counsel for the accused submitted that the evidence of the prosecution is highly unreliable and that the learned Sessions Judge was not legally justified to place reliance on the evidence of the three witnesses which failed to connect the accused with the commission of the offence and that the learned Sessions Judge failed to consider the evidence in this perspective that accused were not named in the F.I.R. and they were falsely roped in after due deliberations and consultations on account of mere pervious enmity. On the other hand learned A.G.A. supported the inferences drawn by the learned Sessions Judge on the basis of the appreciation of the evidence and submitted that the two accused were rightly convicted and sentenced in the case.

6- The medical evidence in the case consist of the statement of Dr. Surat Singh Aswal (P.W.5), who proved the post mortem report, Ext. Ka.2. On post mortem, circular ligature mark around the neck with abraded contusion and three small abrasions on the neck were detected. Right central incisor tooth was missing and left central incisor of the lower jaw was fracture. In the opinion of the medical officer the death of the deceased was caused due to throttling and according to him the death could have been caused in the night of 7-9-1985. There was no injury on lips or gums of the deceased and there was also no laceration in the sockets of the teeth. Learned Sessions Judge accepted the medical evidence and opined that it was a case of homicidal strangulation and not suicidal one and further that injury in relation to the teeth could have been caused at some anterior time than the death.

7- Learned counsel for the appellant also did not dispute the opinion of the medical officer and the view taken by the learned Sessions Judge that the strangulation was homicidal. The place and time of the occurrence as given by the prosecution and proved by the evidence of the witnesses was also not disputed and therefore there can not be any doubt that Inderjeet Singh suffered death by strangulation which was homicidal in the night of 7-9-1985 in village Mehargaon. In regard to the implication of the accused learned counsel for the appellants took us to the entire evidence of the witnesses and having gone through the statements of the witnesses it may be stated at the out set that the argument of the learned counsel that the evidence of the prosecution is not reliable need to be sustained.

8- It is evident from the medical evidence that Inderjeet Singh deceased has received injuries on the neck which pertain to homicidal strangulation and there is no other injury on his body as may remotely suggested that he was first of all physically assaulted by three accused or at any rate by two accused at the house of his mother-in-law Smt. Balam Dei (P.W.2) before he could return to his own house in the night of 7-9-1985. Learned Sessions Judge, while considering the evidence of this witness did not taken in to account the medical evidence in the case. we do not find it safe to subscribe to the view that Inderjeet Singh was not to receive a single injury despite being given beating by three persons at the house of this witness. This witness has not disclosed what was the cause of quarrel between Inderjeet Singh and the accused. Mere claim that Inderjeet Singh was beaten at his house by the accused can not be said to be reliable, particularly when the independent witness Sakal Singh, who according to her came there and rescued Inderjeet Singh at that time, was not examined in evidence. Even according to this witness her daughter-in-law was in the adjoining room of the house and this lady was also not produced or examined in evidence to corroborate the claim made by the witness. According to this witness Inderjeet Singh was bleeding from nose and mouth when he left her house all alone. It is difficult to believe if Inderjeet Singh was really to receive the bleeding injury on these

sensitive parts of the body, he could have been permitted to leave all alone by the witness. All aspects of the matter indicate that she is not a truthful witness and it can not safely be accepted that Inderjeet Singh came to her house and was assaulted by the accused before he went from there to his own house.

9- The above inference takes us to the evidence of Smt. Surtama Dei (P.W.1), the wife of the deceased. She also claimed that on that day in the night her husband came to the house with injuries having bleeding from nose and mouth. He is said to have asked her to give money and to accompany him to a doctor for medical treatment. She had declined on the pretext of being sick of fever and suggested the husband to stay in the house during the night and they may go to the doctor in the morning. The mere assertion and conduct of Smt. Surtama Devi belie the claim of the prosecution that Inderjeet Singh was bleeding from nose and mouth as a result of any assault by the accused. Had it been so, the witness would have at once agreed to accompany her husband to go to a doctor for medical treatment and since it had not been done it indicate that the claim made in this regard was false. Even otherwise it can not be safely believed that despite such injuries the witness could have permitted her husband to go all alone from the house to a doctor to get medical treatment. This again militate against the normal conduct of the wife in case the husband was really hurt and was bleeding from the nose and mouth.

10- This aspect of the matter may also be considered with reference to the evidence of Narayan Dutt (P.W.3). According to him Inderjeet Singh also visited his house at about 9.15 P.M. and demanded Rs. 200/- for getting him medically treated by a doctor. According to the witness Inderjeet Singh was then having bleeding from the nose and mouth. This witness was related to the deceased and if Inderjeet Singh was really injured and having bleeding like this there was no reason that the witness would not have paid him some money to facilitate the receiving the medical treatment for the injuries. This witness also stated that Inderjeet Singh then left his house all alone. This conduct also run counter to the claim that a relation would have permitted the injured Inderjeet Singh to leave

the house in the night all alone. Not playing the money and also not accompanying him in the late hours of the night on that day clearly indicate that the evidence of the witness is unreliable and it can not safely be accepted that Inderjeet Singh also reached there with such injuries.

11- Having considered the evidence of these witnesses in regard to the first part of the incident of that day we are convinced that the evidence of the above witnesses does not appear reliable and convincing and it will not be safe to believe that Inderjeet Singh deceased was first of all assaulted by the accused and was made to sustain injuries resulting in bleeding from nose and mouth.

12- In regard to the other part of the occurrence, it need to be stated at the out set that the learned Sessions Judge did not place reliance on the evidence of Ms. Soban Dei (P.W.4), the 14 years old daughter of the deceased and observed that she was not even sure about the place where she heard the conversation of the accused from the place where the singing and dancing programme was being held at the Devta Ka Chowk and further she was not sure about the place where she heard the alarm or shout of her father. Accordingly the learned Sessions Judge opined that her testimony could not be deemed to be reliable and no reliance can be placed on her evidence regarding the conversation which the accused were allegedly having while sitting at the chowk of Bharat Singh in the night of 7-9-1985. When the evidence of this witness was not found reliable then how the evidence of P.W.1, Smt. Surtama Dei that her daughter came from there at that time and told her about the talks which the accused were then making in regard to the elimination of the deceased and whereupon she had woken up Sobendra Singh and went towards Panchakki (Gharat) at about 10 P.M. to see that her husband was being hanged by rope with the tree by the accused could have been held trustworthy. The stand taken by the learned Sessions Judge has been self-contradictory in this way because there was no occasion for Smt. Surtama Devi to be alarmed by any information from her daughter Ms. Soban Dei.

13- As regard the claim by Smt. Surtama Devi that she has also heard the cries of her husband and then went out with Sobendra Singh from the house and found the accused engaged in getting her husband hanged by a tree with the help of a rope. According to her she was sleeping in the house when her daughter came in the house. The evidence of this effect can not be believed because there was no occasion for her daughter to come there to give any such information to her about her husband. She has claimed that she woke by on hearing cry or shout and therefore the entire claim made by her appear highly unreliable and unconvincing. Further she took about an hour to prepare herself to leave the house and it can not be believed that the accused could have been there for such a long time for having the deceased tied by rope to be hanged by the walnut tree near the 'Gharat'. This witness also stated that when she reached there her husband was made to sit on a branch of the tree while being tied by a rope and that her husband was already dead by that time. She also stated that she was not aware at which place the murder of her husband had been committed. This again shows that she has no inkling whatsoever as to how and where her husband Inderjeet Singh had been strangulated to death and she was merely made to say like this to implicate the accused in the commission of the crime. We also can not lose sight of the fact that the prosecution has not examined her nephew Sobendra Singh who accompanied her to that place on allegedly hearing the shouts heard from the side of the tree. In our view learned Sessions Judge has tried to explain the infirmities in the evidence of the witness by saying that these occurred on account of some confusion in the mind of the witness but in our opinion such a shaky evidence cannot be the result of mere confusion but only on account of it some story is cooked up and later on the witness tries to repeat the same and the falsehood of the story then come to the surface when the witness is cross-examined in respect to the allegation. This happened here and the evidence of the witness not at all being convincing indicating that the things have not happened in the manner as stated to by the witness.

14- There can be no gain saying that the F.I.R. of the case also failed to corroborate the prosecution version and the evidence of above witnesses. None was named in the F.I.R. which was even recorded next day of the occurrence by a close relative Jaipal Singh (P.W.6). Had it been known that accused were the culprits there was no reason for not mentioning their names in the F.I.R. Informant Jaipal Singh himself prepared the written report and appear to be a literate person. We can not believe that he could have lodged the F.I.R. without being told the manner in which the occurrence took place and who were the culprits. He intended to show that the wife of the deceased did not tell him about the culprits or about the manner in which the murder was committed but in the totality of the circumstances of the case we are not at all inclined to accept his explanation. According to P.W.1 the occurrence was known to large number of village people, names of few of them such as Narayan Dutt, Soorbeer Singh, Indra Dutt and Teeka Singh were disclosed by her and in a situation like this it could not be safely accepted that on account of fear of the accused the F.I.R. was lodged in such a manner without mentioning the names of the culprits and without any inkling in it about the manner of the occurrence. It is also of significance that Teeka Singh has accompanied the informant to the Sub Divisional Magistrate to report the matter but even then F.I.R. against unknown person was lodged and these circumstances are sufficiently enough to indicate that the claim of this witness is highly tainted, doubtful and unreliable.

15- It has come in the evidence of Investigating Officer Bharat Singh Mehar (P.W.7) that the statements of the witnesses of the fact were recorded by him for the first time on 12-9-1985. He gave out that he was waiting for the report of the post mortem to be received and thereafter proceeded to examine the witnesses. The explanation put forward by the Investigating Officer itself give indication that perhaps the murder was blind and time was taken to prepare the story on the basis of the post mortem report of the deceased and this was the reason that none was named in the F.I.R. and no manner in which the occurrence took place was disclosed in

it. In fact the F.I.R. of the case also shown that the claim of the prosecution is not reliable and the evidence of the witnesses is incredible and on such evidence even the two accused should not have been convicted for the offences with which they were charged.

16- On consideration of the evidence on record we are of the firm view that the evidence of the prosecution not being reliable the accused are entitled to be held not guilty and acquitted of the charges levelled against them.

17- In view of above, the appeal succeed and is allowed accordingly. The judgment dated 19-4-1986 is set aside. The accused Rajendra Prasad and Ilam Singh are held not guilty and are acquitted of the charges under Sections 302/34 and 201 I.P.C. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

18- Let the record be transmitted to the court below for compliance.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

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